

1 Congress are watching carefully to see if we are  
2 serious about considering the issues with which we  
3 were charged.

4 I was reminded of this while reviewing the  
5 comments made during the debate in the U.S. Senate.  
6 Senator Reid noted that he would be steadfast in his  
7 monitoring of the Commission's environment and agenda,  
8 and Senator Coats made clear his willingness to amend  
9 the legislation if he thought that we were dodging the  
10 issues.

11 We have an obligation to all of those  
12 individuals and to the state legislators, city  
13 councils, and tribes who are looking to this  
14 Commission for information.

15 Having said that, I'd like to offer three  
16 choices this morning for our work considering the  
17 rules. You will find a 70-page analysis of the rules  
18 as submitted by Commissioners Lanni, Bible, and  
19 Dobson. I would note again that these are rules that  
20 you have had in your possession for some time.  
21 Hopefully you have done your due diligence in reading  
22 them, in studying them, and have come prepared this

1 morning to discuss them.

2                   We can do one of several things. We can  
3 either discuss this rule by rule, or we can discard  
4 any that we have determined or we have an opinion  
5 which states that they are illegal or redundant, or we  
6 can refer the entire package to GSA for additional  
7 analysis and to continue to operate under the rules as  
8 adopted.

9                   The votes for each of these rules,  
10 incidentally, will be by roll call vote, and the  
11 reason for that is that under FACA when Commissioners  
12 act illegally, they may be held liable.

13                   At the conclusion of our discussion, we  
14 would like to discuss some perhaps more simplified,  
15 common sense rules of conduct crafted for our  
16 consideration.

17                   What is the Commission's pleasure?

18                   MR. LOESCHER: Madame Chairman.

19                   CHAIRPERSON JAMES: Yes.

20                   MR. LOESCHER: Thank you, Madame Chairman.

21                   I appreciate your opening remarks. I  
22 disagree totally with your statement. There's a lot

1 at stake here in this Commission. We are going to  
2 affect people's jobs. We're going to affect their  
3 lives. We're going to comment on the moral values of  
4 people. We're going to affect their investments, and  
5 we're going to affect their life style, and there's a  
6 lot at stake.

7           And the rules are important as we begin  
8 this process that will last over two years and cover  
9 the range of issues that Congress has asked us to look  
10 at.

11           I took a look at the statute just like you  
12 did, and I find that all powers of the National  
13 Gambling Impact Study Commission are vested in the  
14 Commission, except that the Chairman is exclusively  
15 authorized to call meetings, and that's in accordance  
16 with Section 5(a) and 5(b). The Chairman is  
17 exclusively authorized to appoint and terminate all  
18 personnel other than the Executive Director, Section  
19 6(c)(1), and the Chairman is exclusively authorized to  
20 procure temporary and intermittent services, Section  
21 6(d), and also the Chairman, with the consent of the  
22 Commission, is authorized to appoint and terminate the

1 Executive Director, Section 6(c)(1).

2           And from my reading of the statute, those  
3 are the powers of the Chairman. All other powers  
4 reside in this Commission.

5           The statute also says that this Commission  
6 may establish such other rules and procedure as it may  
7 deem fit, and of course, you caveat that to say it has  
8 to be lawful, and I agree with you, and certainly our  
9 efforts should be in that context.

10           I have a hard time here this morning  
11 coming to the meeting and finding this extensive legal  
12 analysis prepared by yourself and the GSA. I'm not a  
13 lawyer. I may be a professional client, but I'm not  
14 a lawyer, and I'm at a disadvantage here as we move  
15 forward, but I'm prepared to move forward however you  
16 want to move forward or this body wishes to move  
17 forward.

18           I came here having the benefit of the work  
19 of Commissioners Bible, Lanni, and Mr. Dobson, and I  
20 appreciate their work. They did extensive analysis,  
21 and I think they're all positive elements for us to  
22 consider, and it was my hope that we could start with

1 a template document by merging the Bible and Lanni  
2 proposals, and then agreeing on that as a format, and  
3 then having the Commissioners debate and either amend  
4 by adding amendments to the procedural rules, or  
5 moving to delete certain procedures, and I think that  
6 would be a logical course of action for us to start an  
7 orderly piece of work.

8                   And so I offer that to the Chairman and to  
9 the Commissioners to see if we couldn't proceed in  
10 that manner. However, Madame Chairman, I think the  
11 rules of procedure are important. Like you say, they  
12 cover the whole breadth of our activities. They  
13 protect people with our subpoena power. They protect  
14 them in the hearings. There's comments or there are  
15 provisions in here to deal with contracting and  
16 subcontracting and how we do that, all kinds of  
17 provisions which set the ground rules for the Chairman  
18 and the Executive Director and others who are doing  
19 our work as we proceed.

20                   As you know, according to the proposed  
21 work plan, we're only looking at maybe five or six  
22 more meetings of this Commission over a two-year

1 period. At least that's what's proposed. So we're  
2 going to be relying on a lot of people to do the work  
3 of the Commission.

4 And I think the work that we do at the  
5 outset right now is important as we look at what  
6 result that we want at the end, and I think having the  
7 ground rules established are important in the conduct  
8 of the work and making sure that we have a successful  
9 result at the end.

10 Anyway, Madame Chairman, I offer the  
11 notion just for discussion at this moment without a  
12 motion that we merge the Bible and Lanni proposals and  
13 use that as a template of discussion.

14 MR. BIBLE: I'm concerned on a procedural  
15 basis. Apparently the GSA counsel is not here today,  
16 and you suggested that some of these proposed rules  
17 are illegal, and I think it would be helpful if they  
18 were here to give us legal advice.

19 CHAIRPERSON JAMES: It would be very  
20 helpful, and I am told that they are, in fact, en  
21 route, whatever that means. In Washington it could  
22 mean any number of things, from being stuck at a

1 traffic light to (pause) --

2 MR. BIBLE: And as you know, we did not  
3 receive this rather lengthy document -- it's some 74  
4 pages of analysis -- until five minutes ago.

5 CHAIRPERSON JAMES: For the benefit of the  
6 public, let me explain what this 72-page document is  
7 that we are referring to.

8 MR. BIBLE: Seventy-four.

9 CHAIRPERSON JAMES: Seventy-four page  
10 document.

11 It is slightly different from what  
12 Commissioner Loescher recommended. He recommended  
13 combining Bible and Lanni's rules, and basically what  
14 I have done is combined Bible, Lanni, and Dobson's  
15 rules, and to offer as a point of departure for  
16 discussion, rather than take any one set of rules, we  
17 went through each set of rules. If a rule addressed  
18 a specific issue, as an example, the first one is  
19 agenda contents, we saw if Mr. Bible had a rule that  
20 related to that issue, if Mr. Lanni had a rule that  
21 related to that issue, or Mr. Dobson had a rule that  
22 related to that issue.

1           We then put on the paper in front of us  
2 the wording from their documents with their proposed  
3 rule.

4           Then Ms. Simpson, who is an attorney  
5 working on staff here, looked to see if there was any  
6 applicable law or regulation that had any bearing on  
7 that particular proposed rule.

8           Then if we perceived a violation or  
9 problem with that particular rule, it's listed there.

10          Then we consulted with various government  
11 agencies and entities for their input because it was  
12 very important to us to do this the correct way.

13          We then went to General Services and sat  
14 down with their staff attorneys and asked them for a  
15 ruling as to whether or not they concurred or did not,  
16 or whether they agreed or disagreed with the finding  
17 that our staff came up with.

18          Then what you see is the chair's  
19 recommendation for how we should handle that  
20 particular rule. So you do have a melding in front of  
21 you of all of the various Commissioners' rules that  
22 have been suggested.



1           It is not a new document in any sense of  
2 the word, except that what you now have before you is  
3 my recommendation for what we ought to do with that  
4 particular rule and GSA's ruling.

5           Again, every Commissioner has had all of  
6 these rules, and I would have hoped that you would  
7 have studied Dr. Dobson's rules, studied Terry Lanni's  
8 rules, studied Bill Bible's rules, and come here today  
9 with an opinion.

10           Many of you have suggested that you're not  
11 attorneys and that you would like to have attorneys  
12 look at them. I would hope that you have done your  
13 due diligence and have had your attorneys look at  
14 them.

15           If you have not and would like to delay  
16 this process and go back, I agree with you,  
17 Commissioner Loescher, that this is significantly  
18 important and has implications for how this Commission  
19 will operate; that if you want to table this entire  
20 discussion, go back and have attorneys look at it, and  
21 we can act on these later, I'm completely open to the  
22 will of the Commission on this.

1                   I think it is vitally important that we  
2 get it right.

3                   John.

4                   MR. WILHELM: Well, I'm glad you said it's  
5 vitally important that we get it right because by your  
6 adding that comment, I found one thing that I could  
7 agree with in what you said.

8                   I'm very disappointed in finding this  
9 document this morning. You said at the first meeting,  
10 Kay, and again yesterday that there'd be no surprises.  
11 Well, I may not have the right Webster definition of  
12 surprise, but to me to find a 74-page document  
13 unattributed to anybody that purports to find various  
14 kinds of violations, slash, problems, whatever that  
15 is, in many of these rules falls in the category of  
16 what I would call a surprise.

17                   You have indicated that the Commissioners  
18 should have done due diligence with respect to these  
19 rules, and I believe that the Commissioners have done  
20 that.

21                   You have also, in essence, threatened the  
22 Commissioners with the possibility that they might

1 vote for something illegal, and we have in front of us  
2 a document whose authorship is not evidence on the  
3 document. You have indicated that it was drafted by  
4 Ms. Simpson, but you've also indicated that there's  
5 been input into it from a whole bunch of federal  
6 agencies beyond the GSA, and yet there's no indication  
7 on this document of what that input may have been.  
8 There's no indication on this document of whether --  
9 of which federal agencies expressed what view on which  
10 rule.

11           And, moreover, there's no distinction in  
12 the narrative between a violation or a problem. I  
13 can't tell from some of these things whether there's  
14 a purported violation of some law, which you correctly  
15 cautioned us that we shouldn't vote for if it's  
16 illegal, or whether this is a problem that you  
17 perceive that is non-legal in nature. There's no  
18 distinction in that regard.

19           I would have to interpret this as an  
20 effort to not only violate your own promise that there  
21 wouldn't be surprises, but more importantly, in the  
22 absence of any other evidence, and perhaps there is

1 other evidence that I don't know about, but in the  
2 absence of any other evidence, I would interpret it as  
3 an effort not to have rules other than the interim  
4 rules that were adopted yesterday because there's no  
5 reasonable way that I could see that the Commissioners  
6 could digest a 74-page document in the allotted agenda  
7 time of one hour and 50 minutes and discuss each of  
8 these among ourselves and vote on each of these by  
9 roll call. That is an obvious and evident  
10 impossibility.

11               So I'm very disappointed in this  
12 development this morning. I am surprised by it. I  
13 think it's entirely inappropriate, and I think that it  
14 emphasizes the need that Bob Loescher tried to address  
15 at our first meeting for a general counsel.

16               I read yesterday and was surprised by not  
17 the content, but the materialization yesterday of the  
18 communication from the Department of Justice with  
19 respect to the notion of getting legal advice, and I  
20 would respectfully suggest that the wrong question was  
21 asked of the Department of Justice.

22               And I would request that you, as the

1 chair, ask the Department of Justice if the department  
2 will detail to this Commission a Department of Justice  
3 attorney who can act in the capacity of general  
4 counsel.

5 I am very uncomfortable at being presented  
6 with a 74-page legal analysis by an attorney I know  
7 nothing about, who is not the general counsel of the  
8 Commission, and then being threatened by the chair  
9 with regard to the possibility of voting on something  
10 illegal. I think that's entirely inappropriate, and  
11 I would like to ask you to ask the Department of  
12 Justice to detail a lawyer full time to this  
13 Commission for the purpose of functioning as general  
14 counsel.

15 CHAIRPERSON JAMES: If you will check your  
16 briefing books, you will note that I did ask every  
17 department, including the Department of Justice, for  
18 detailees to this particular Commission and are  
19 awaiting response from that.

20 MR. WILHELM: I'm asking you as chair to  
21 make a much more specific request. You made a generic  
22 request to detail somebody. I'm asking you to make a

1 request to the Department of Justice to detail a full-  
2 time attorney for the purpose of serving as general  
3 counsel before this Commission.

4 CHAIRPERSON JAMES: Well, the chair  
5 respectfully declines that request. I will retain  
6 outside legal counsel for this Commission, which I  
7 have under the law the authority to do.

8 And let me state for the record one other  
9 thing. It is not any attempt to threaten the  
10 Commission with potential legal action; only to make  
11 sure that you understand fully the responsibilities  
12 that we have before us, and I think it would be  
13 irresponsible on my part not to do that.

14 And, again, let me restate that it was my  
15 hope that you would come prepared this morning having  
16 studied and prepared, and what you have in front of  
17 you was a document that is designed to help facilitate  
18 that discussion.

19 I am prepared to discuss it. It was an  
20 attempt to organize the material in some kind of way.  
21 What do you do when you have a list of rules from  
22 three different Commissioners, each addressing

1 somewhat the same issues? But to try to put those  
2 rules side by side to see how they relate to one  
3 another, that is the full context of what you have in  
4 front of you.

5 Believe me, I have no pride of ownership  
6 or authorship in the document. If it is not the  
7 pleasure of the Commission to proceed in that  
8 direction, I am happy to consider some other  
9 alternative ways of addressing this. It is merely a  
10 procedural way to organize our work this morning.

11 The chair recognizes Commissioner Wilhelm.

12 MR. WILHELM: Thank you.

13 I am perfectly prepared to discuss these.  
14 I would ask the chair to advise us in advance, since  
15 there's no possibility of being finished with this  
16 analysis and discussion and roll call vote by 11:00  
17 a.m.; I would ask the chair to advise us in advance  
18 whether the discussion will be cut off at 11:00 a.m.  
19 or whether the work plan discussion will be dumped or  
20 whether the public comment portion will be dumped.

21 I think the likelihood of getting through  
22 the procedure you described by 3:30 today, even if all

1 of those other items are dumped, would be ambitious.

2               Secondly, I want to reiterate not by an  
3 unwillingness to talk about this and, indeed, vote on  
4 it, notwithstanding the threat about illegal votes,  
5 but I want to observe that to be presented on the  
6 morning of the discussion with a 74-page legal  
7 analysis that in my view is rather shoddy falls  
8 directly into the category that you said you would not  
9 do as the chair.

10              I'm perfectly prepared to discuss this.  
11 I have done due diligence on this. I have no  
12 difficulty in discussing any of it, but I think that  
13 the procedure that you have developed here this  
14 morning is not only inappropriate, but there's no  
15 prayer of it working between now and 11:00 a.m.

16              CHAIRPERSON JAMES: First of all, I would  
17 like to address the issue of, quote, shoddy work by  
18 General Services Administration and the staff at the  
19 Gambling Commission. I'd like to say for the record  
20 that I believe that, first of all, they do this for a  
21 living. These are federal employees which spend their  
22 lives advising commissions. This is what they do.



1                   They have taken the time to do their due  
2 diligence. They have gone through every regulation,  
3 every rule, every law that could apply. This is what  
4 these people do.

5                   MR. WILHELM: Kay, my comment --

6                   CHAIRPERSON JAMES: Excuse me. The chair  
7 has the floor.

8                   What they have done for this Commission is  
9 nothing more than what they do for every other  
10 commission in terms of advising them, giving them  
11 their best wisdom and counsel about the rules that  
12 they'd like to set up.

13                   I really take issue with the comment of  
14 the shoddy work that either they or the Commission  
15 staff have done.

16                   MR. WILHELM: Kay, my comment was not --

17                   CHAIRPERSON JAMES: Mr. Wilhelm.

18                   MR. WILHELM: My comment was not addressed  
19 to the GSA. The GSA, if I understand the structure of  
20 this document -- and correct me if I'm wrong -- the  
21 GSA, if I understand the structure of this document,  
22 is responsible for the line on each page where it says

1 "GSA's comment." It is my interpretation, perhaps  
2 wrongly of this document, that that is the GSA's  
3 portion, and so my comments were not addressed to the  
4 GSA.

5           My comments were addressed the structure  
6 of a document that has a category called  
7 "violation/problem." I need to know whether somebody  
8 thinks one of these rules is illegal. If somebody,  
9 separately from whether somebody thinks it's illegal,  
10 thinks it's a problem, that's a perfectly legitimate  
11 point, but the idea that one lumps together violations  
12 and problems with any reference to any legal authority  
13 is, in my view, a shoddy piece of work for a legal  
14 document.

15           If it's somebody's opinion, that's fine.  
16 My comment is not addressed to the GSA's section of  
17 this, which is GSA's comments, if I'm interpreting the  
18 document correctly.

19           CHAIRPERSON JAMES: I would like to  
20 introduce to those of you who have not met you before  
21 Carol Simpson, who is the staff attorney who has been  
22 working on this document.

1           MR. BIBLE: Now, when you are introduced  
2 as staff attorney, are you the Commission's attorney?

3           CHAIRPERSON JAMES: She is a Commission  
4 employee who has been working on the Commission staff  
5 to prepare us for our discussion today.

6           MR. BIBLE: How many staff people do we  
7 have at this time?

8           CHAIRPERSON JAMES: Mark, how many is it  
9 now?

10          MR. BOGDAN: Three.

11          CHAIRPERSON JAMES: We now have three.

12          MR. BIBLE: So we do have Commission  
13 counsel? So you are Commission counsel?

14          MS. SIMPSON: I don't know that I've been  
15 employed as Commission counsel. I'm on staff, and I  
16 went through this.

17                 If I could answer very quickly --

18          MR. BIBLE: But you are an attorney?

19          MS. SIMPSON: I am an attorney. Yes, I  
20 am.

21                 The work here that's been added, I think,  
22 Mr. Wilhelm, you're absolutely incorrect. The first

1 part of this stuff is stuff written by three  
2 Commissioners. It wasn't written by anybody else.  
3 It's just translated, just typed in there, which took  
4 a lot of time. There's no analysis there.

5 The second part is applicable law that we  
6 just copied and put in there. So it was not something  
7 that anybody made up.

8 If you'll look very simply the reason  
9 there's a violation/problem line is on the first page.  
10 There's no applicable law. So there obviously could  
11 be no violation of an applicable law, but in  
12 discussing things with the various entities around the  
13 city, they said these were some things that you may  
14 want to think about.

15 So we just put those in there. It is not  
16 my analysis that I came up with on my own without  
17 talking to anyone. It was after talking to people.

18 The chair then asked me to write that up  
19 so it would be in some form to look at. GSA then  
20 could then give an opinion on that.

21 So it's very simple to tell when there's  
22 a violation of law. The words "contrary to law" are

1 written there when there's a violation of the law. It  
2 also is an obvious thing that if it says applicable  
3 law and there is none, there can't be a violation.  
4 That's why the two words were used: sometimes there is  
5 something that's contrary to law; sometimes there's  
6 just a problem.

7 CHAIRPERSON JAMES: The chair recognizes  
8 Dr. Dobson.

9 DR. DOBSON: Madame Chair, given the  
10 discussion around the table, I'd like to make a motion  
11 that we table this discussion pending reference to or  
12 referring this issue to the GSA or the general counsel  
13 of the Commission with a request that a report and  
14 recommendations be made back to us no later than two  
15 weeks prior to the next meeting.

16 MR. BIBLE: And I would support the  
17 motion, but instead of having recommendations, what  
18 I'd like to see is a comprehensive legal analysis as  
19 to whether or not any of these rules violate any  
20 applicable provisions of federal code.

21 DR. DOBSON: I would accept that in my  
22 motion.

1                   CHAIRPERSON JAMES: It has been moved and  
2 seconded. Would we like to have discussion?

3                   MR. LOESCHER: Madame Chairman, I ask for  
4 a five-minute recess.

5                   CHAIRPERSON JAMES: If we could get  
6 through this, that would be great. If you feel a need  
7 for a recess, can I hear the sense of the rest of the  
8 Commission? Would that be helpful to you?

9                   The meeting stands in recess for five  
10 minutes.

11                   (Whereupon, the foregoing matter went off  
12 the record at 9:37 a.m. and went back on  
13 the record at 9:47 a.m.)

14                   CHAIRPERSON JAMES: Call back to order.

15                   I think we have a motion before the  
16 Commission. I'd like to have a restatement of the  
17 motion, and I believe the motion was made by Dr.  
18 Dobson.

19                   Dr. Dobson, I wondered if you would  
20 entertain adding to your amendment that along with the  
21 analysis that GSA would make, that they would  
22 recommend, based on their experience of having worked

1 with numerous other commissions, as a part of their  
2 report back to us, that they would recommend some  
3 common sense rules under which we could operate.

4 DR. DOBSON: That's fine with me --

5 CHAIRPERSON JAMES: For review.

6 DR. DOBSON: -- if the second approves.

7 CHAIRPERSON JAMES: And the second was, I  
8 believe, Bill Bible. Would you?

9 MR. BIBLE: And it intends to have them  
10 provide their analysis as to whether or not the rules  
11 will work?

12 CHAIRPERSON JAMES: That's correct.

13 MR. BIBLE: I think as long as they do  
14 that and they give concrete examples of where and why  
15 they're making that recommendation I would agree with  
16 that.

17 CHAIRPERSON JAMES: And that we would  
18 then, therefore, table that until such time as we have  
19 that analysis back, and then we will look at the  
20 rules.

21 The chair recognizes Mr. Lanni.

22 MR. LANNI: Thank you, Madame Chair.

1           I have some other requests as part of this  
2 if it's acceptable to Commissioner Dobson and to  
3 Commissioner Bible.

4           One is whatever opinion is rendered by the  
5 GSA, I would recommend that the Committee Secretariat,  
6 James Dean, not a staff attorney, be signing that  
7 particular document so we have clear indication that  
8 the appropriate authority is in place.

9           CHAIRPERSON JAMES: I'm not sure if we  
10 have the authority to dictate internal GSA -- I  
11 appreciate your --

12           MR. LANNI: This was a request. I realize  
13 we don't have control over that particular agency.

14           Would that be an appropriate request, Mr .  
15 Snowden?

16           MR. SNOWDEN: Let me say I think it's  
17 important now that I make this comment. GSA is being  
18 drawn into a discussion on how you should operate, how  
19 the Commission should operate. Generally that is not  
20 our role.

21           We are advisory to you. To all of the  
22 Commissioners, it's important to know we have no -- we



1 represent no particular perspective here. Our role  
2 only is to provide you advice on the legal and  
3 regulatory operations of the Commission and to keep  
4 you in compliance with law and regulation.

5           What you're asking us to do is to help you  
6 craft out your operating rules. Your legislation  
7 gives you clear and invaluable authority to write any  
8 rules you see fit as long as it does not violate any  
9 organic legislation or any rules or regulations.

10           What we did is looked at these rules as  
11 they were presented, and those that we thought were  
12 clearly in violation of your law or existing  
13 regulations and other laws, we commented on such.  
14 Those that we did not, we, in fact, made no comment or  
15 said we did not disagree with the finding.

16           I want you to be clear. I think that  
17 you're bringing GSA -- I know that it appears to me  
18 that you're making GSA dictate how you run. I don't  
19 think you want to do that. I don't think you want to  
20 yield any of your flexibility and any of your ability  
21 to dictate how you operate.

22           To your specific question, Mr. Lanni,

1 whether it would be appropriate for Jim Dean, who is  
2 the Committee Secretariat, to sign off on how you  
3 operate would not be in keeping with his role. Again,  
4 we are not in the position of telling commissions,  
5 "This is how you should operate."

6           Clearly, we will review this, give you an  
7 opinion. It is only advisory. You can take it as an  
8 attempt to show you best practices, but you don't have  
9 to comply.

10           MR. LANNI: Thank you, Mr. Snowden.

11           One other question, Madame Chair.

12           CHAIRPERSON JAMES: Certainly.

13           MR. LANNI: Relative to that, the  
14 confusion that I have -- and, again, I must say I am  
15 also not an attorney. I think probably more people  
16 have announced in Washington today that they're not  
17 attorneys, considering the number of attorneys in  
18 Washington. However, I am not one -- and we've used  
19 three different words relative to the GSA in different  
20 manners.

21           First, in the 74-page document that was  
22 submitted to us, the reference to GSA is a comment

1 from GSA.

2 In Madame Chair's remarks and response to  
3 Mr. Wilhelm, she referred to a GSA ruling.

4 And you're now saying a GSA opinion, and  
5 I suspect not even being an attorney there is a  
6 significant difference among those three statements.  
7 If, and my request here is if there is going to be a  
8 determination -- and I'll use that as a fourth word --  
9 a determination from the GSA, I would like to have  
10 that determination presented in writing to the  
11 Commission members. I think that would be  
12 appropriate.

13 In addition, I would also ask that when it  
14 comes to Ms. Simpson's comments about contacts with a  
15 number of other agencies -- I tried to write some of  
16 them down. She speaks more quickly than my shorthand  
17 or lack of shorthand is capable of responding -- but  
18 I would think it's appropriate if we're going to have  
19 that as part of this, assuming this proposal is  
20 approved, that we would have written statements from  
21 those particular entities also, and again, I used the  
22 word advisedly, "statements." I'm not sure exactly

1    what would be appropriate.

2                   And I was going to ask for a clear  
3    understanding of the GSA's role in this, and I think  
4    you, Calvin, have responded to that appropriately.

5                   And I would ask for one other aspects  
6    based upon the Chairman's comments that there may be  
7    some criminal liability potentially here. I would  
8    like to have some written opinion presented to each of  
9    the Commissioners to better understand that because,  
10   as much as I like the federal government, I have no  
11   interest in spending any time in a federal  
12   penitentiary.

13                   Thank you, Madame Chair.

14                   CHAIRPERSON JAMES: Let me just say one  
15   thing before the chair recognizes another  
16   Commissioner.

17                   I think that you're absolutely correct,  
18   Terry, in the use of language, whether it's advisory,  
19   whether it's a comment, or whether it's an opinion,  
20   and my understanding is that GSA can give us their  
21   advice, and that says something about who we are, and  
22   that question was raised yesterday.

1                   So who is the ultimate authority? And I  
2 would say to our C Span watchers right now that if you  
3 want a lesson in government and how it works, this  
4 Commission is probably as good an example as anything  
5 because we are a hybrid.

6                   I mean, we don't fall anywhere  
7 particularly under any particular authority, which  
8 makes it very, very difficult at this point to say if  
9 we don't like what the chair does, who do we appeal?  
10 That question came up yesterday. Who is the final  
11 authority and the final appeals process for this  
12 Commission?

13                   And it's an interesting study. I think a  
14 lot of Washington attorneys and a lot of agencies have  
15 gone into a tailspin over that particular question.  
16 I promise you that when new legislation is drafted, I  
17 suspect they will be far more clear about those issues  
18 than they have been with this particular Commission.

19                   So the question is when does GSA say that  
20 a suggested rule is in violation of the law. They  
21 have been clear in advising us to date about which  
22 rule they believe is in violation of a law. They've

1 done that. That's already happened, and they're  
2 prepared only to talk about that.

3 Outside of that, they have no dog in this  
4 fight, outside of that kind of an opinion.

5 Now, I think we have a good motion on the  
6 floor at this point, and in the discussion I don't  
7 want to lose the motion that we have before us, and  
8 that is that we table these rules, send them back for  
9 -- and what I -- I don't want to reword Dr. Dobson's  
10 motion with the caveats and the friendly amendments  
11 from Terry Lanni -- and if there is not any further  
12 discussion on that motion -- is it germane to the  
13 motion, Bill?

14 MR. BIBLE: It is.

15 CHAIRPERSON JAMES: Okay. Then we want to  
16 entertain it.

17 MR. BIBLE: Mr. Snowden spoke after the  
18 motion, and I believe Dr. Dobson amended the motion to  
19 include having them review and recommend or make  
20 advisory recommendations. As I interpreted your  
21 comments, you are not particularly comfortable with  
22 that. You felt that that was something you did not --

1 a position you didn't want to be in, but you would not  
2 mind reviewing the proposed rules strictly from a  
3 legal basis to indicate whether they conform with  
4 federal statute, rule, and regulation.

5 And I think we ought to probably  
6 reconsider, Dr. Dobson, and just ask them for the  
7 legal analysis, and we can do the subjective stuff  
8 ourselves.

9 DR. DOBSON: In fact, that's what I  
10 intended. Obviously I don't think anybody's asking  
11 GSA to tell us how to run the Commission apart from  
12 what the law says, but speaking personally, I don't  
13 want to be counter to the law either, Terry, and I  
14 don't want to make any decision here that's going to  
15 get us into difficulty.

16 So somebody has to give us that opinion,  
17 and I assume that's GSA.

18 CHAIRPERSON JAMES: And for the record, we  
19 have not heretofore asked GSA for that. In those  
20 particular areas, they said "no comment." That's for  
21 our discussion and our deliberation.

22 We only want from them their best advice

1 on what is legal, what is not, and then it's up to  
2 this Commission. The only thing that we asked them  
3 for is based on their experience if they have some  
4 common sense rules that they have seen adopted by  
5 other commissions that they could send to us for our  
6 review, and I think that's an entirely appropriate  
7 request.

8 I do not want to lose the motion that's on  
9 the table right now. Dr. Dobson, if you would restate  
10 it.

11 MR. LANNI: Madame Chair.

12 CHAIRPERSON JAMES: Certainly.

13 MR. LANNI: I'm sorry. If we could add  
14 the word "in writing."

15 CHAIRPERSON JAMES: In writing.

16 MR. LANNI: Fine.

17 CHAIRPERSON JAMES: In writing.

18 DR. DOBSON: I can restate my original  
19 motion. Terry, you'll have to give the friendly  
20 amendments to it because I didn't write those down.

21 But I move that we refer these rules, this  
22 discussion, to GSA and to the counsel for the



1 Commission with a request that recommendations, in  
2 writing, and a report be returned to us no later than  
3 two weeks prior to the next Commission meeting.

4 CHAIRPERSON JAMES: And that motion was  
5 then seconded by Bill Bible.

6 I'd like to call for a voice vote. All  
7 those in favor, please say aye.

8 MR. LOESCHER: Madame Chairman, I'd like  
9 a roll call vote, please.

10 CHAIRPERSON JAMES: Certainly. We can do  
11 a roll call vote. You understand the motion before  
12 you.

13 Mr. Bible?

14 MR. BIBLE: aye.

15 CHAIRPERSON JAMES: Mr. Dobson.

16 DR. DOBSON: Aye.

17 CHAIRPERSON JAMES: Mr. Lanni.

18 MR. LANNI: aye.

19 CHAIRPERSON JAMES: Mr. Leone.

20 MR. LEONE: Aye.

21 CHAIRPERSON JAMES: Mr. Loescher.

22 MR. LOESCHER: Yes.

1           CHAIRPERSON JAMES: Mr. McCarthy.

2           MR. McCARTHY: Aye.

3           CHAIRPERSON JAMES: Mr. Moore.

4           DR. MOORE: No.

5           CHAIRPERSON JAMES: Mr. Wilhelm.

6           MR. WILHELM: Aye.

7           CHAIRPERSON JAMES: The motion carries.

8           All right. We will now turn our attention

9 to --

10          MR. LOESCHER: Madame Chairman.

11          CHAIRPERSON JAMES: The chair recognizes

12 Mr. Loescher.

13          MR. LOESCHER: Thank you.

14          Just for the sake of information, I had  
15 our lawyers merge the Bible and Lanni proposals, and  
16 I just provide it to the Commission members and your  
17 office for information.

18          CHAIRPERSON JAMES: So that has been  
19 circulated. Again, for the Commissioners, I would  
20 take note that that is a merger of the Lanni/Bible,  
21 and it did not include Dr. James Dobson.

22          Okay. We're going to move now --

1 DR. MOORE: Madame Chairman.

2 CHAIRPERSON JAMES: Yes, Dr. Moore.

3 DR. MOORE: The reason I voted no -- it  
4 concerns me that we've delayed this for two weeks now,  
5 at minimum, by turning to GSA to do something. I  
6 don't know what they're going to do, but they will  
7 come back with some document, and half of us will  
8 agree with that document.

9 It's time, it looks like to me, for this  
10 Commission to start discussing how we want to operate  
11 and write down rules and regulations on how we want to  
12 operate and get five votes out of this nine on each of  
13 those rules if we want to, then turn that over to GSA,  
14 and let them tell us how many laws we've broken, you  
15 know, and things of that nature, and make suggestions  
16 of how we could correct those.

17 I'm one of those that is not an attorney.  
18 I'm not even a professional client of an attorney.  
19 I'm not even afraid of attorneys and have attorneys as  
20 friends.

21 (Laughter.)

22 DR. MOORE: I'm not afraid of being sued

1 even though I'm a physician, and they have been known  
2 to be sued. I pay my malpractice insurance and let  
3 the chips fall where they may.

4 PARTICIPANT: So to speak.

5 DR. MOORE: So that's my concern.

6 CHAIRPERSON JAMES: Well, Dr. Moore, I  
7 certainly could not agree with you more that we have  
8 delayed the work of this Commission over these. I  
9 think though that we are not going to snatch victory  
10 right now, and the next item on the agenda is, indeed,  
11 the work plan, and it would be great to move to that  
12 part of our discussion, but I see my good friend, Mr.  
13 Wilhelm has a comment before we do.

14 MR. WILHELM: I have an information  
15 request. I would like to request that the  
16 Commissioners be provide with information pertaining  
17 to Commission staff and pertaining to Commission  
18 expenditures, since we don't have a budget yet, and in  
19 particular, with respect to staff who have already  
20 been hired either on a permanent or temporary basis,  
21 I would appreciate the following information,  
22 obviously not now, but you know, after the meeting at

1 some point: name, job title, compensation, period of  
2 employment, if it's temporary or if it's otherwise  
3 limited in some fashion, job description, and resume,  
4 and I would appreciate the same information as staff  
5 are hired in the future, and I would appreciate the  
6 same information with respect to any detailed  
7 employees, except not compensation in that  
8 circumstance.

9 In addition, I would like to request that  
10 the Commissioners be provided on a monthly basis with  
11 a detailed accounting of the expenditures of the  
12 Commission.

13 CHAIRPERSON JAMES: That is certainly a  
14 reasonable request.

15 Dr. Dobson.

16 DR. DOBSON: Madame Chair, before we leave  
17 this issue, I just want to say for the record and in  
18 defense of the chair, what would we have expected to  
19 have been done to help us facilitate this discussion  
20 today? You've got three separate documents. People  
21 complained about it being 74 pages long. Put the  
22 three together, and I guess it's 140 pages long.

1           Three separate documents laid out before  
2 us with a need to compare item for item, but they're  
3 listed with different numbers, and then on the spot  
4 ask counsel to give us an opinion about whether it's  
5 legal or illegal, and to do that in the course of this  
6 one meeting. That would have been absolutely  
7 impossible, and I commend the chair and the staff for  
8 attempting to synthesize this for us so we could get  
9 our arms around it because otherwise it would have  
10 been absolutely unwieldy.

11           CHAIRPERSON JAMES: Thank you.

12           The chair recognized when she took this  
13 job, Dr. Dobson, that you're going to get beat up when  
14 you do it right and get beat up when you do it wrong.  
15 We're just going to keep doing it.

16           At this point, I -- yes, the chair  
17 recognize Mr. McCarthy.

18           MR. MCCARTHY: Madame Chair, during the  
19 discussion yesterday of the Subcommittee on Research  
20 Information and the letting of contracts to do  
21 research by the Commission, there was discussion about  
22 when competitive bidding would be required and under

1    what circumstances it might not be required.

2                   At what point do we intend to try to  
3    address that issue today?

4                   CHAIRPERSON JAMES:   Well, it would have  
5    come up as we went through the various rules because  
6    there were some that addressed that particular issue.  
7    If you would like some clarification on that, we do  
8    have Mr. Snowden here now who could address that.

9                   MR. McCARTHY:   Well, I do have a series of  
10   questions to pose.

11                  CHAIRPERSON JAMES:   Would you like to do  
12   that before we get into our work plan discussion?

13                  MR. McCARTHY:   May I suggest this?  I will  
14   submit a series of questions to Mr. Snowden and copy  
15   the members of the Commission so that they will be  
16   able to read the questions, and then at some point I  
17   would like to have some sort of discussion and not  
18   just an exchange of written communications, if I may.

19                  CHAIRPERSON JAMES:   Certainly.

20                  MR. McCARTHY:   Maybe we can do it by  
21   conference call.  I'm not sure how we do it, but  
22   please think about that.

1                   CHAIRPERSON JAMES: I certainly will.

2                   MR. BIBLE: Also, along those same lines,  
3 yesterday you had a discussion about the possibility  
4 of raising some grant funds, and maybe you could take  
5 a look at applicable federal law as to whether federal  
6 agencies, which I assume we are, can accept outside  
7 monies.

8                   CHAIRPERSON JAMES: Certainly.

9                   The chair recognizes Mr. Snowden.

10                  MR. SNOWDEN: Thank you.

11                  You do not today have the authority to use  
12 gifts. Every federal agency has the authority to  
13 receive gifts. In order to use gifts received -- now,  
14 this is very technical -- in order to use gifts given,  
15 there must be language in your enabling legislation  
16 that authorizes you to use gifts.

17                  Absence of that authority, you cannot  
18 accept gifts. Well, you can accept gifts. You can't  
19 use them. That's --

20                  (Laughter.)

21                  MR. SNOWDEN: Let me explain to you the  
22 process. A federal employee --



1                   MR. McCARTHY: Do you really want to get  
2 into this right now?

3                   MR. BIBLE: Oh, we take the money and put  
4 it in the Treasury and don't spend it.

5                   MR. SNOWDEN: And, in fact, you're right.  
6 What happens is if you accept the money, it goes into  
7 the general fund, and it goes to the good of the  
8 entire federal government because you do have gift use  
9 authority.

10                  CHAIRPERSON JAMES: So if Commissioner  
11 McCarthy wanted to take us all out to dinner and pay  
12 for it?

13                  MR. SNOWDEN: Well, in fact, he can.

14                  CHAIRPERSON JAMES: Good. That's all we  
15 need to know.

16                  MR. SNOWDEN: And let me know where.

17                  (Laughter.)

18                  CHAIRPERSON JAMES: That's fine.

19                  I'd like to, with that caveat that you  
20 will continue to have some conversation and  
21 correspondence on the issue of contracts and clarify  
22 some of those issues, and that information will be